

1 HONORABLE RONALD B. LEIGHTON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 AUSTIN LAZAR,  
11 v.  
12 DON BOURBON,  
13 Plaintiff,  
Defendant.

CASE NO. C18-5175 RBL  
ORDER ADOPTING AND  
MODIFYING REPORT AND  
RECOMMENDATION

14 THIS MATTER is before the Court on Magistrate Judge Christel's Report and  
15 Recommendation [Dkt. #49], recommending that the Court Grant Defendants' Motions to  
16 Dismiss under Rule 12(b)(6). [Dkt. #s 26 and 28].

17 The Report and Recommendation correctly determined that pro se, *in forma pauperis*  
18 Plaintiff Lazar had failed to state a claim against any defendant. However, it recommended  
19 dismissal without prejudice, rather than providing Lazar amendment. On a 12(b)(6) motion, "a  
20 district court should grant leave to amend even if no request to amend the pleading was made,  
21 unless it determines that the pleading could not possibly be cured by the allegation of other  
22 facts." *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990).  
23 However, where the facts are not in dispute, and the sole issue is whether there is liability as a  
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1 matter of substantive law, the court may deny leave to amend. *Albrecht v. Lund*, 845 F.2d 193,  
2 195–96 (9th Cir. 1988).

3 It appears to be at least possible that the allegations in Lazar's complaint could be  
4 amended to cure the deficiencies identified in the Report and Recommendation.

5 Therefore, instead of dismissal, the court will **ORDER Lazar to amend his complaint**  
6 to address these pleading deficiencies **within 21 days** of this Order. If he does not, the case will  
7 be dismissed.

8 The Clerk shall send copies of this Order to Lazar's last known address, to the defendants  
9 through counsel, and to Magistrate Judge Christel, and shall **re-note** this matter for **January 28**.

10 IT IS SO ORDERED.

11 Dated this 4<sup>th</sup> day of January, 2019.

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13 Ronald B. Leighton

14 Ronald B. Leighton  
United States District Judge

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